exhausted the evidence shows nothing of that sort. The marriage has irretrievably broken down; taking into account the whole of the circumstances and the characters and personalities of the parties in this case any right-thinking person would come to the conclusion that the respondent has behaved in such a way that the petitioner cannot be expected to live with the respondent. There will be an order that the marriage stands dissolved. The decree nisi may be made absolute in three months. Costs to the petitioner.

Order accordingly.

Solicitors: *Subbiah & Co; George John & Co.*

Reported by *Yap Shao Sin*

Tan Lim v Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia & Ors

HIGH COURT (KUALA LUMPUR) – ORIGINATING SUMMONS NO R8-24-37-88
EUSOFF CHIN J
5 MAY 1989

Preventive Detention – Detention order – Whether order was invalid by reason of delay in execution – Reasons given for delay – Whether immediate action required – Restricted Residence Enactment, ss 2(i), (ii), 3(i), & (ii) – Interpretation and General Clauses Ordinance 1948, ss 7 & 38 – Interpretation Act 1967, ss 54(2) & 62

Words and Phrases – 'As soon as may be' – Restricted Residence Enactment, s 3(ii)

The Minister's order under s 2(i) of the Restricted Residence Enactment was for an unspecified period. A further order was issued on 18 June 1988 under s 2(ii) of the Enactment to the effect that the plaintiff was to reside for a period of three years from the date of the order in the town council area of Kuala Krai. There was a delay of six days and it was only on 24 June 1988 that the police collected the plaintiff to be taken to Kuala Krai. This delay was due to the need for administrative arrangements to be made for the order to be served and the plaintiff to be transported to Kuala Krai. The plaintiff's contention was that the three-year period specified in the order was to take immediate effect from the date of the order and the delay of six days was fatal since the plaintiff's detention at Pudu Prison had become invalid and illegal as he should have been taken to Kuala Krai immediately.

Held, dismissing the plaintiff's application:

(1) The plaintiff was under lawful detention under the Minister's order pursuant to s 2(i) of the Enactment and his detention would continue until further orders. It would appear that when a further order was made on 18 June 1988, the plaintiff should be released and taken to Kuala Krai and his further detention after that date would be illegal. However, s 3(ii) of the Enactment allows time for the order to be executed and the prison authorities can only take action when the order has been received.

(2) The words 'as soon as may be' in s 3(ii) of the Enactment does not envisage immediate action but action must be taken with all convenient speed depending on the circumstances of each case. The delay of six days was explained to the satisfaction of the court and the order made on 18 June 1988 was valid.

Cases referred to

1 *PP* v *Koh Yoke Koon* [1988] 2 MLJ 301 (distd)
2 *Aminah* v *Superintendent of Prison, Pengkalan Chepa, Kelantan* [1968] 1 MLJ 92 (folld)
3 *Ooi Ah Phua* v *OCCI Kedah/Perlis* [1975] 2 MLJ 198 (refd)

Legislation referred to

Interpretation Act 1967 ss 54(2), 62
Interpretation and General Clauses Ordinance 1948 ss 7, 38
Restricted Residence Enactment ss 2(i), (ii), 3(i), (ii)

Eusoff Chin J: The Minister's order (Form A) under s 2(i) of the Restricted Residence Enactment is for the detention of the plaintiff until the prison superintendent received further orders from the Minister, ie the period for the detention of the plaintiff at the prison was not specified. On 18 June 1988 the Deputy Minister of Home Affairs issued an order under s 2(ii) of the Restricted Residence Enactment to the effect that the plaintiff was to reside for a period of three years from the date of the order, in town council area of Kuala Krai. DSP Pow Kim Guan was informed by the assistant secretary of the Ministry of Home Affairs at 12.30pm on 18 June 1988 of this order. It was a Saturday. On Monday 20 June 1988 he collected the order. The prison officer of Pudu Prison received the order on the afternoon of 22 June 1988 from the police. The next day he prepared the necessary papers and made the necessary arrangements to serve the order on the plaintiff. On 24 June 1988 the police collected the plaintiff to be taken to Kuala Krai. The delay of six days had been explained by DSP Pow Kim Guan, ie he had to make the necessary arrangements to get the order served on the plaintiff, and arrangements for transportation of the plaintiff to Kuala Krai. He could not get the transport finalized until 24 June 1988.

The main point raised by learned counsel for the plaintiff is that since the three-year period specified in the order was to take immediate effect from the date of the order, the delay of six days was fatal since the plaintiff's detention at Pudu Prison had become invalid and illegal as he should have been taken to Kuala Krai immediately. He cited *PP v Koh Yoke Koon*[1] and a number of other persuasive authorities. The learned Senior Federal Counsel Encik Raos quoted s 3(ii) of the Enactment. He also cited *Aminah* v *Superintendent of Prison, Pengkalan Chepa Kelantan*[2] and *Ooi Ah Phua* v *OCCI Kedah/Perlis.*[3] Further he explained that the order was made to take effect 'from this date' ie date of the order, because the order had to be made in Form C of the Enactment, and that Form C para (b) bears these printed words: '(b) for the term of ... years from this date'.

I believe that the Minister could deviate from the words used in Form C if he is of the opinion that the order could not be executed immediately because s 7 of the Interpretation and General Clauses Ordinance 1948 (and similar provisions under s 62 of the Interpretation Act 1967) states that where forms are prescribed, slight deviation therefrom not affecting the substance or not calculated to mislead shall not invalidate the forms. However, unlike the respondent in *PP* v *Koh Yoke Koon*,[1] the plaintiff here was under lawful detention at Pudu Prison under the Minister's order made in Form A under s 2(i) of the Enactment and his detention would continue until further orders issued by the Minister such as the one made in Form C under s 2(ii) of the Enactment. It would appear that as on 19 June 1988, when the Minister made the order in Form C, the plaintiff should be released from Pudu Prison to be taken to Kuala Krai, and his further detention in Pudu Prison after this date would appear to be illegal. This is, however, not the case here since s 3(ii) of the Enactment allows time for the Minister's order to be executed. Section 3 of the Enactment states:

> 3(i) When any such order as is referred to in section 2 subsection (ii) or section 2A has been made with reference to any person, he shall be taken before the Officer-in-Charge of the prison in which he is detained and the Officer-in-Charge shall inform him of the terms of the order and shall deliver to him a copy thereof and shall require him to state the place in which, consistently with the terms of the order, he desires in the immediate future to reside.
>
> (ii) As soon as may be after action has been taken under subsection (i), the Officer-in-Charge shall hand over the person to whom the order relates together with a warrant of release in the Form in the Schedule to any Police Officer appointed by the Chief Police Officer to receive him, and the person shall thereupon be conveyed under police escort to the place wherein he states he wishes to reside and shall there be released.
>
> (iii) In this section and in the Schedule 'Officer-in-Charge' has the meaning assigned in the Prisons Ordinance 1952.

My view is that the officer-in-charge of the prison can only take action under s 3(i) when he has received the order from the Minister. The words 'as soon as may be' in s 3(ii) of the Enactment does not envisage immediate action, but the action must be taken with all convenient speed depending on the circumstances of each particular case. Section 38 of the Interpretation and General Clauses Ordinance 1948 (similar provision is found in s 54(2) of the Interpretation Act 1967) states:

> 38 Where no time is prescribed or allowed within which anything shall be done, such thing shall be done with all convenient speed and as often as the prescribed occasion arises.

Further, the words 'as soon as may be' has been held to mean as nearly as may be reasonable in the circumstances of the particular case: *Aminah* v *Superintendent of Prison Pengkalan Chepa*.[2] The authorities have, of course, to explain to the satisfaction of the court why action could not be taken sooner.

In this case there was a delay of six days before the plaintiff was taken to Kuala Krai. The affidavits of both DSP Pow Kim Guan and the Asst Superintendent of Prison Teoh Chen Ming have explained the delay to my satisfaction. I therefore find and declare that the order made by the Minister in Form C dated 18 June 1988 is valid and that the plaintiff has to comply with that order. I make similar findings and declarations in respect of the other applications in OM R8-24-38/89, OM R8-24-39/89 and OM R8-24-40/89. Costs to the defendants.

Application dismissed.

Reported by *Yap Shao Sin*

Choh Nyee Ngah & Anor v Syarikat Beruntong Sdn Bhd

HIGH COURT (MUAR) – CIVIL SUIT NO 9 OF 1984
EUSOFF CHIN J
23 APRIL 1989

Tort – Negligence – Highway accident – Wheel coming off lorry suddenly – Latent defect – Lorry examined and certified to be in roadworthy condition prior to accident – Defence of inevitable accident – Lorry driver jumping out of lorry – Whether contributory negligence

The plaintiffs were the widow and daughter respectively of one Yee Sow Lim, deceased, a timber lorry driver who had been employed by the defendant. The deceased died following a highway accident which occurred when a wheel of the defendant's lorry that he was driving in the course of his employment suddenly came off the wheel assembly. The plaintiffs brought an action alleging negligence against the defendant and claiming damages. From the evidence given by a government vehicle examiner, it appeared that a castle nut fitted by a cotter pin to the axle had held the wheel in place and that the wheel came off following dislodgment of the cotter pin and the castle nut. It was contended for the defendant that this was a case of an inevitable accident caused by a latent defect not discoverable by the exercise of reasonable care in the inspection and maintenance of the lorry. For the defendant, evidence to the effect that the wheel bearings could have broken causing the wheel and tyre to come off was given. The lorry was bought in 1979 and there was no evidence to show that any of its wheel assembly parts had been changed although it had been put to heavy use to carry logs along jungle tracks and highways from the time of purchase up to the date of the accident on 17 June 1983. The lorry had been inspected on 19 March 1983 by a government vehicle examiner in accordance with the law which required such an examination to be undertaken every six months to determine whether the lorry was in a roadworthy condition. A certificate to the effect that the lorry was in a roadworthy condition was apparently issued following the inspection on 19